Circuit Court for Baltimore City
Case No. 24-C-21-000745

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1228

September Term, 2022

ANNA MANTEGNA

v.

MARILYN J. MOSBY, ET AL.

Wells, C.J.,
Nazarian,
Storm, Harry C.,
(Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 11, 2023

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises out of the termination of Anna Mantegna's employment as an assistant state's attorney—and statements made following her termination—shortly after the Office of the State's Attorney for Baltimore City ("BCSAO") learned that Mantegna may have leaked an investigation of the Baltimore City Police Department's ("BPD") now-defunct Gun Trace Task Force ("GTTF") to one of its members. Mantegna sued her former employer, Marilyn Mosby, then State's Attorney for Baltimore City; Michael Schatzow, then Chief Deputy State's Attorney for Baltimore City; and the State of Maryland (collectively "Defendants" or "Appellees") in the Circuit Court for Baltimore City for defamation, intentional infliction of emotional distress, wrongful discharge, false light invasion of privacy, and respondeat superior. After dismissing Mantegna's amended complaint, but allowing her to amend it a second time, the circuit court ultimately dismissed Mantegna's second amended complaint with prejudice. Mantegna timely appealed the court's dismissal and submits the following issues for our review:

1. Did the circuit court err in dismissing Mantegna's second amended complaint?
2. Should Maryland adopt the doctrine of implicit defamation?

For the following reasons, we affirm the circuit court's ruling dismissing Mantegna's second amended complaint and decline to formally recognize the doctrine of defamation by implication.

FACTUAL AND PROCEDURAL BACKGROUND

Mantegna began working as an assistant state's attorney for Baltimore City in 2004. As an assistant state's attorney, Mantegna was recognized for her work in federal and state cases involving gun and drug charges.

According to Mantegna, the events surrounding this case take place in the context of the 2018 Democratic primary election for Baltimore City State's Attorney. Mantegna claims that a major issue in that race was what role, if any, the BCSAO had in discovering, or failing to discover, the criminal activities of the GTTF.

On February 15, 2018, Stephen Schenning, then Acting United States Attorney for the District of Maryland, sent Mosby a letter marked "CONFIDENTIAL" which informed her about a phone call between Mantegna and then-Sergeant Wayne Jenkins. As explained in this letter, on January 3, 2018, former BPD Sgt. Jenkins pled guilty to federal racketeering, robbery, obstruction of justice, and other related charges arising out of his participation in the GTTF. In his written plea agreement, Jenkins claimed that on October 5, 2016, he spoke with Mantegna who advised him to stay away from Detective Jemel Rayam[1] because he had just lost a *Franks* hearing[2] and was under investigation for lying and stealing.[3] Jenkins shared this information with Rayam.

On January 16, 2018, following Jenkins' admission and guilty plea, the FBI

[1] Former Baltimore Police detective, and another member of the GTTF.

[2] Born out of *Franks v. Delaware*, 438 U.S. 154 (1978), "[a] Franks hearing is permitted where testimony or other proof is proffered by a defendant that the police officer who sought the warrant provided deliberately false material evidence to support the warrant or held a reckless disregard for the truth." *Greenstreet v. State*, 392 Md. 652, 669 (2006).

[3] Prior to speaking with Jenkins, the FBI was already investigating the GTTF. By way of a wiretap, the FBI overheard two other GTTF members stating that Jenkins had spoken with a female assistant state's attorney who told him that some members of the GTTF were under federal investigation. Upon obtaining Jenkins' cell phone records, the United States Attorney's Office ("USAO") identified a seventeen-minute phone call on October 5, 2016 between Jenkins and a phone tied to Mantegna.

interviewed Mantegna. Mantegna confirmed that she had a conversation over the phone with Jenkins on October 5, 2016, during which she warned him about Detectives Momonu Gondo[4] and Rayam.[5] According to Schenning's letter, Mantegna emphatically warned Jenkins that cases involving Rayam were not prosecutable. She recalled telling Jenkins, "Those guys are crooked, dirty. Watch them like a hawk."

Schenning noted that he had "no basis to believe [Mantegna] knew Jenkins was corrupt[,]" nor did he see "a basis to pursue any federal charges against [Mantegna]" at the time. He concluded, "[i]t would be presumptuous of me to tell you how to proceed, but you may want to consider getting [Mantegna's] version from her."

Three days after receiving Schenning's letter, Camille Blake Fall, Deputy Chief of Administration for the BCSAO, contacted Mantegna and scheduled a meeting.[6] On February 20, 2018, Blake Fall and Schatzow told Mantegna that she was an "at-will employee, being terminated without cause." At the time, Mantegna was given no reason

[4] Another former Baltimore Police detective and member of the GTTF.

[5] While Schenning's letter indicates that the purpose of this phone call was to warn Jenkins about Gondo and Rayam, Mantegna maintains that the reason she was speaking with Jenkins was to coordinate witnesses and ensure that he and several other officers would be available to testify in two cases in which they were involved. Mantegna admits that she "advised Sgt. Jenkins, in his capacity as the supervising officer, that in a prior case Det. Rayam had caused the State to lose a *Franks* hearing and that she had not trusted Det. Gondo since a shooting incident outside of his home . . . in December of 2006." But, she also claims that everything she discussed with Jenkins was public information, and that they did not discuss any open or ongoing investigations.

[6] Mantegna explains that she was originally asked to come to the office for a meeting on Monday, February 19, 2018 (President's Day). But, after learning that Mantegna was awaiting a jury verdict in a trial, the meeting was rescheduled to Tuesday, February 20, 2018.

for her termination.

The next day, Baynard Woods, a reporter, emailed Melba Saunders, Mosby's spokesperson, following up "to confirm whether Anna Mantegna was let go in connection to the GTTF case." Saunders replied:

> Anna Mantegna is not an employee of the Office of the State's Attorney for Baltimore City.
>
> The USAO has shared components of its GTTF investigation with our office and we are not at liberty to comment. All questions pertaining to the investigation should be directed to the USAO.

On February 26, 2018, Mosby responded to Schenning's letter. In her letter, Mosby questioned how Mantegna would have known of the federal investigation into the GTTF when neither Mosby nor her deputies knew about it until the indictments were issued. Instead, Mosby thought it was much more likely that Mantegna told Jenkins about the BCSAO and BPD's investigation into Rayam's *Franks* hearing testimony and conduct with BPD. She concluded:

> When considering all of the above, the strongest inference, by far, is that the investigation that Ms. Mantegna disclosed to Jenkins was not federal at all, but rather was the ongoing SAO/BPD investigation of Rayam that was known to ASAs [Assistant State's Attorneys] in Ms. Mantegna's unit due to the disclosures we were making in all Rayam cases. In her capacity, such a disclosure was inappropriate.

On April 20, 2018, Mosby's personal attorney, James Webster, sent Mantegna a letter asking her to cease and desist from stating that her termination was related to her alleged refusal to disclose information to Mosby about an FBI investigation into her

administration.[7] Webster wrote, "[y]ou were terminated because an FBI investigation revealed you had leaked the existence of an investigation of certain members of the Baltimore Police Department's Gun Trace Task Force ("G.T.T.F.") to another member of the G.T.T.F." With permission from Schenning, Webster shared a redacted version of Schenning's letter with Mantegna.

On February 11, 2019, almost a year after many GTTF members either pled guilty or were convicted, the BCSAO met with a state commission investigating the scandal, asking for greater discretion to undo certain convictions tainted by the GTTF. Schatzow referenced the 2015 *Franks* hearing in which a judge determined Rayam was not a credible witness, stating, "We certainly knew about that, the whole world knew that, and we reported that to [internal affairs.]"

Mantegna initiated the underlying action on February 22, 2021, which was assigned case number 24-C-21-000745.[8] Before that complaint was served on the

[7] This letter was written in response to Mantegna's "Statutory Notice of Claim Letter" which claimed, among other things, that "Ms. Mantegna was terminated because the Mosby Administration feared she was assisting the FBI with their investigation into the Mosby administration as Ms. Mantegna refused to discuss a confidential exchange with FBI investigators on a sealed investigation into the Mosby Administration." Mantegna has since stated that she is not comfortable with that characterization of her termination and has not made such claims in her complaints.

[8] On February 19, 2019, Mantegna filed her first lawsuit arising from these circumstances, which was assigned case number 24-C-19-000945 ("Case 945"). A couple days later, she filed an amended complaint alleging defamation (Count I); intentional infliction of emotional distress (Count II); wrongful discharge (Count III); invasion of privacy–false light (Count IV); civil conspiracy (Count V); and respondeat superior (Count VI). On December 4, 2019, the circuit court dismissed the amended complaint without prejudice. More than a year later, Mantegna filed a second amended complaint, which the

defendants, Mantegna filed an amended complaint on December 21, 2021. Her amended complaint included the following counts: defamation (Count I); intentional infliction of emotional distress (Count II); wrongful discharge (Count III); invasion of privacy–false light (Count IV); and respondeat superior (Count V). After the amended complaint was served, Defendants moved to dismiss the amended complaint, arguing that Mantegna failed to state any claims on which relief could be granted, and, alternatively, that Mosby and Schatzow were immune from the claims. Mantegna opposed the motion to dismiss, arguing that the amended complaint alleged enough malice to avoid being barred by immunity, and the allegations were sufficient to support her claims. On April 29, 2022, after a hearing on the motion, the circuit court granted Defendants' motion to dismiss the amended complaint but permitted Mantegna thirty days to file a second amended complaint.

On May 31, 2022, Mantegna filed her second amended complaint, which included the same counts as her amended complaint. For many of the same reasons as before, Defendants moved to dismiss the second amended complaint, which Mantegna again opposed. A hearing was held on August 15, 2022, in which the circuit court dismissed the second amended complaint with prejudice On September 14, 2022, Mantegna timely filed her notice of appeal.

We will supply additional details where they are relevant to our analysis.

circuit court also dismissed, but granted her 30 days to file another amended complaint. Mantegna filed a third amended complaint 31 days later. The circuit court dismissed Case 945 with prejudice on July 6, 2022, and Mantegna did not appeal that ruling.

DISCUSSION

I. The Circuit Court Properly Dismissed Mantegna's Second Amended Complaint

Standard of Review

Under Maryland Rule 2-322(b)(2), a defendant may seek dismissal of a complaint if the complaint "fail[s] to state a claim upon which relief can be granted." A motion to dismiss is "properly granted if the factual allegations in a complaint, if proven, would not provide a legally sufficient basis for the cause of action asserted in the complaint." *Wheeling v. Selene Finance LP*, 473 Md. 356, 374 (2021). Because the decision to grant or deny a motion to dismiss is a question of law, we review such decisions de novo, with no deference to the trial court. *Cain v. Midland Funding, LLC*, 475 Md. 4, 33 (2021); *see also D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) ("When reviewing the grant of a motion to dismiss, the appropriate standard of review is whether the trial court was legally correct.") (cleaned up).

In doing so, we "must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them[.]" *Chavis v. Blibaum & Assocs., P.A.*, 476 Md. 534, 551 (2021) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010)). That said, the well-pleaded facts comprising the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader are not enough. *RRC Northeast, LLC*, 413 Md. at 644. Further, any ambiguity in the pleading will be construed against the pleader when determining its

sufficiency. *See Parker v. Hamilton*, 453 Md. 127, 133 (2017) (quoting *Bobo v. State*, 346 Md. 706, 709 (1997)).

Defamation and Invasion of Privacy (False Light)

A. Parties' Contentions

Mantegna contends that the allegations in her second amended complaint are sufficient to support her claims for defamation and false light invasion of privacy. Citing to *Embrey v. Holly*, she asserts that "[c]ourts have long determined that the circumstances existing at the time of a defamatory publication are relevant to understanding whether a publication is defamatory." 48 Md. App. 571, 578 (1981), *aff'd in part*, *rev'd in part*, 293 Md. 128 (1982). She adds that "[t]he test is not the intention of the speaker, 'but how it was reasonably understood by a third person.'" *Id.* at 581. In her case, Mantegna argues that third parties understood "the communication"[9] to be defamatory and it was Defendants' intent that it be understood as such. Further, she contends that the "context in which defendants took the actions alleged by [her] shows both the defamatory nature of the communication and how it portrays Plaintiff in a false light." As for Mosby's February 26, 2018, letter to Schenning, Mantegna argues that "Ms. Mosby's attempt to falsely and intentionally implicate [Mantegna] as 'the leak' is not in the public interest, nor is her practice of forcing line prosecutors to call compromised police officers to testify." And, even if a privilege applies, Mantegna contends it was abused because "the statements were

[9] It is not exactly clear from her brief which communication Mantegna is referring to in this context.

made as part of an intentional campaign to defame her and cause her to be blamed for the leak."

The State responds that Mantegna's second amended complaint failed to state a claim for defamation and false light with respect to four statements. First, as to Saunders' comments, the State argues that the circuit court properly found her comments do not constitute defamation, as a matter of law, because they were not false, and the State distinguishes *Embrey*, 48 Md. App. at 571, from this case. Next, as to Mosby's letter to Schenning, the State argues again that it does not contain any false statements: for example, the State contends that Mantegna has never alleged that she did not tell Jenkins about an investigation of Rayam; additionally, the State argues that it is clear from Mosby's letter that there was an ongoing investigation of Rayam by the BCSAO and BPD. Alternatively, even if Mosby's letter is defamatory, the State contends it is subject to the public interest and common interest privileges. Third, as to Webster's letter, the State asserts that "[t]he circuit court properly found the letter was not defamatory because it was sent to Ms. Mantegna and was not published to a third person." Finally, as to Schatzow's comments indicating the widespread knowledge of a judge's finding in 2015 that Rayam was not credible, the State agrees with the circuit court's finding that this statement does not defame Mantegna, adding that the statement did not mention or reference her.

B. Analysis

To present a prima facie case of defamation, the plaintiff must establish that: (1) the defendant made a defamatory statement to a third person, (2) the statement was false, (3) the defendant was legally at fault in making the statement, and (4) the plaintiff suffered

harm. *See Lindenmuth v. McCreer*, 233 Md. App. 343, 356–57 (2017) (citing *Offen v. Brenner*, 402 Md. 191, 198 (2007)). "A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." *Offen*, 402 Md. at 198–99 (cleaned up). To determine whether a publication is defamatory, the publication must be read as a whole as "words have different meanings depending on the context in which they are used[,] and a meaning not warranted by the whole publication should not be imputed." *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012) (quoting *Batson v. Shiflett*, 325 Md. 684, 726 (1992)). "A false statement is one that is not substantially correct." *Piscatelli*, 424 Md. at 306 (quoting *Batson*, 325 Md. at 726). The plaintiff bears the burden of proving the statement is false. *Batson*, 325 Md. at 726.

"An allegation of false light must meet the same legal standards as an allegation of defamation." *Piscatelli*, 424 Md. at 306. Therefore, if a complaint fails to state a claim for defamation, then it also inevitably fails to state a claim for false light. *See id.*

1. Saunders' Comments

Although not quite as clearly in her brief, Mantegna, in her second amended complaint, claims that Saunders—on behalf of Mosby—defamed and portrayed her in a false light as the ASA who leaked the investigation of the GTTF to one of its members Responding to a reporter who asked her whether Mantegna had been terminated in connection to the GTTF case, Saunders wrote:

> Anna Mantegna is not an employee of the Office of the State's Attorney for Baltimore City.

> The USAO has shared components of its GTTF investigation with our office and we are not at liberty to comment. All questions pertaining to the investigation should be directed to the USAO.

To establish a claim for defamation (and false light), the plaintiff must allege all four elements discussed above, including that the statement was false. *See Lindenmuth*, 233 Md. at 356–57. Mantegna cites to *Embrey v. Holly*, 48 Md. App. 571 (1981), *aff'd in part*, *rev'd in part*, 293 Md. 128 (1982) (remanded for a new trial only on the issue of punitive damages) to support her argument. In *Embrey*, Dennis Holly, a local Black television news anchor, sued James Embrey, Jr., a local radio host known as Johnny Walker, for defamation. *Id.* at 573–76. In February of 1979, a severe snowstorm hit Baltimore City. *Id.* at 573. Upon learning that the blizzard had immobilized the police, "looters" entered commercial stores and stole what they could carry. *Id.* at 573–74. A local newspaper reported that most of the arrestees were Black males. *Id.* at 574. A few days after that report, upon learning on his radio show that Holly was entering a hospital for knee surgery, Embrey commented, "Too bad about Dennis Holly, though. Hope that comes out okay. Wonder how he hurt his knee. Probably fell down carrying that TV during the blizzard last week, right?" *Id.* at 575. Holly alleged that the statement was defamatory because it suggested that he was one of the looters, while Embrey claimed it was a joke. *Id.* At 576

Before addressing the issues (including but not limited to defamation) in *Embrey*, this Court acknowledged that "we must view them in light of the circumstances existent at the time the allegedly defamatory remarks were made." *Id.* at 578. We elaborated on this, explaining that there is defamation per se—where the publication is defamatory on its

face—and defamation per quod—where extrinsic facts must be alleged in the complaint to establish the defamatory character of the words. *Id.* at 579–80. We went on to note that initially, the trial judge decides whether a statement is capable of conveying a defamatory meaning. *Id.* at 581. If the statement is ambiguous, then the trier of fact decides. *Id.* The test, we explained, "is not intention, but how it was reasonably understood by a third person." *Id.* After viewing the evidence in a light most favorable to Holly, we determined that it would have been reasonable for some radio listeners to conclude from Embrey's remark—that Holly probably fell down and hurt his knee while carrying a TV during the recent blizzard—"that Holly, a black man, was associated with the looting that occurred during the blizzard and that he injured his knee while carrying the pilfered television set while he simultaneously endeavored to elude capture by the police." *Id.* at 587. Thus, we held that the trial court properly submitted the question to the jury because the statement could have been reasonably understood to be a joke or defamatory. *Id.* at 586–87.

Mantegna seems to be relying on *Embrey* for the proposition that Saunders' statement was defamatory per se and per quod (or by implication). We disagree. As the circuit court concluded, Saunders' statement was not defamatory per se because it was not false. Mantegna was terminated on February 20, 2018. Saunders' email was sent the next day, February 21, 2018. Thus, at the time the statement was made to a third party, Mantegna was no longer an employee of the BCSAO. As to the second part, the USAO had indeed shared components of its GTTF investigation with the BCSAO, including those detailed in Schenning's February 15, 2018 letter to Mosby. In addition to stamping "CONFIDENTIAL" on the front page of the letter, Schenning wrote, "I am providing you

herein with a factual summary of non-public information evidence related to Jenkins' admission. I ask that you keep it confidential." Considering the USAO's request that the BCSAO keep this information regarding its investigation private, it was not substantially incorrect for Saunders to write that the BCSAO could not comment on the investigation, and that all questions regarding the investigation should be directed to the USAO. By contrast, in *Embrey*, Embrey "knew that Holly had injured his knee while playing in a benefit football game and not while carrying a TV set in the snowstorm." 48 Md. App. at 592. Thus, Embrey was not arguing that his statement was true, but rather that it was a joke. And because Holly provided enough evidence and context, outside the statement itself, to convince the judge it was capable of a defamatory meaning, it went to the jury. We will address Mantegna's request that we formally adopt the doctrine of defamation by implication later on, but for now, we reiterate that Saunders' statement does not constitute defamation per se.

2. Mosby's Letter

Mantegna alleges that Mosby's letter to Schenning on February 26, 2018 defamed her by falsely accusing her of having leaked the existence of a BCSAO investigation that did not exist. Specifically, Mosby wrote: "From my vantage point, what is most logical and probable is that ASA Mantegna improperly disclosed an ongoing investigation within my office—the investigation of Rayam by my office and the Baltimore Police Department (BPD), an investigation that was still active on October 5, 2016 when Ms. Mantegna spoke with Jenkins." Later on, she concluded:

When considering all of the above, the strongest inference, by far, is that the

> investigation that Ms. Mantegna disclosed to Jenkins was not federal at all, but rather was the ongoing SAO/BPD investigation of Rayam that was known to ASAs [Assistant State's Attorneys] in Ms. Mantegna's unit due to the disclosures we were making in all Rayam cases. In her capacity, such a disclosure was inappropriate.

As discussed above, to make a claim for defamation (and false light), the plaintiff must establish all four elements, including that the statement was false. *See Piscatelli*, 424 Md. at 306. "A false statement is one that is not substantially correct[,]" and "[t]he plaintiff carries the burden to prove falsity." *Id.* (cleaned up). The State argues that Mosby's statement is not false because Mantegna "never alleges that she did not tell Sergeant Jenkins about an investigation of Detective Rayam." However, in her second amended complaint and brief, Mantegna in fact alleges "[t]here was no discussion regarding any open or ongoing investigations." Further, the State argues that "it is clear from Ms. Mosby's letter that there was an ongoing investigation of Detective Rayam by the State's Attorney and the Baltimore Police Department." Mantegna, however, argues that there was no BCSAO investigation into the GTTF, providing two affidavits from private defense attorneys to support her claim.[10] Without deciding whether Mantegna's allegations are sufficient to prove that Mosby's letter was defamatory, we shall assume that they are for purposes of evaluating whether the claimed privileges exist. *See*

[10] In April of 2021, Staci Lee Pipkin Woods and Ivan J. Bates (now the State's Attorney for Baltimore City) gave affidavits stating that to their knowledge, the BCSAO was not investigating the GTTF officers. Woods was an attorney with the BCSAO from 2005 to 2014 before becoming a private defense attorney in Baltimore. Bates was also an attorney with the BCSAO from 1996 to 2002, before becoming a private defense attorney in Baltimore.

Piscatelli, 424 Md. At 306–07 ("Where a defendant asserts a privilege in a motion for summary judgment in a defamation action . . . we assume that the plaintiff's allegations of defamation are true for purposes of evaluating whether the privilege exists.").[11]

The State argues that the statements in Mosby's letter are protected by the public interest and common interest privileges. "Where a plaintiff can establish a *prima facie* case of defamation, the defendant bears the burden of proving that a privilege existed at the time of the statement in order to escape liability." *Lindenmuth*, 233 Md. App. at 357. "A privilege is a circumstance in which a person will not be held liable for a defamatory statement because the person is acting in furtherance of some interest of social importance, which is entitled to protection." *Id.* (cleaned up). The Supreme Court of Maryland[12] has recognized four common law qualified privileges, two of which apply here. *Id.* at 358 (quoting *Gohari v. Darvish*, 363 Md. 42, 57 (2001)).

The first is the public interest privilege, which permits the publication of materials "to public officials on matters within their public responsibility." *Gohari*, 363 Md. at 57. Here, as the State points out, Mosby, in her capacity as State's Attorney for Baltimore

[11] Although the case before us is on appeal from a motion to dismiss, rather than a motion for summary judgment, we still consider this analytical approach applicable.

[12] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

City, sent a letter to Schenning, then Acting United States Attorney for the District of Maryland, concerning his prosecution of members of the GTTF, and a possible leak of the investigation from her office. As then Acting United States Attorney for the District of Maryland, investigating and prosecuting members of the GTTF, this information regarding a potential leak of his office's investigation would have been within his public responsibility.

The second is the common interest privilege. "Common interests are usually found among members of identifiable groups in which members share similar goals or values or cooperate in a single endeavor." *Id.* at 58. The rationale is "to promote free exchange of relevant information among those engaged in a common enterprise or activity and to permit them to make appropriate internal communications and share consultations without fear of suit." *Id.* As the State's Attorney for Baltimore City and Acting U.S. Attorney for the District of Maryland, Mosby and Schenning have a shared interest in the investigation and prosecution of crime in Baltimore City, including that of the GTTF.

However, a qualified privilege may be overcome if the plaintiff can establish that the defendant published the statement with actual malice. *Lindenmuth*, 233 Md. App. at 359–60. In this context, malice is "a person's *actual knowledge* that his or her statement is false, coupled with his or her *intent to deceive another* by means of that statement." *Id.* at 360 (emphasis in original) (quoting *Ellerin v. Fairfax Sav. F.S.B.*, 337 Md. 216, 240 (1995)) (cleaned up). In her second amended complaint, Mantegna alleges that "Defendants Mosby and Schatzow allowed, benefitted from, and encouraged the portrayal of Ms. Mantegna being fired as a consequence of being the 'leak' mentioned by Mr. Leo

Wise,[13] relating to the GTTF cases, with actual knowledge that any implication of [Mantegna] in the matter of the alleged 'leak' was false." As Mantegna explains it, "these events took place during a contentious election, during which it would be to Defendants tremendous advantage to be perceived as having identified and dealt with the leak." But, Mantegna's bald assertions and speculations about Mosby's motives for informing Schenning that she thought Mantegna leaked her office's investigation of a member of the GTTF, do not establish with sufficient specificity that Mosby *actually knew* her assessment was false or intended to deceive Schenning. Relatedly, the letter's noncommittal language—"what is most logical and probable is . . . [,]" "the strongest inference . . . is . . ."—on its face, further indicates that Mosby did not have actual knowledge that her statement was false nor that she intended to deceive by making it. Accordingly, we conclude that Mosby's letter does not demonstrate the malice required, therefore it enjoys qualified immunity.

3. Webster's Letter

Webster's letter to Mantegna, on April 20, 2018, informed her that she was terminated because an FBI investigation revealed that she had leaked the existence of an investigation of certain members of the GTTF to one of its members. The circuit court quickly concluded that this letter was not a publication, and we agree. "'Publication' in the law of defamation is the communication of defamatory matter to a third person or persons. This means that for alleged defamatory words to be actionable they must be seen or heard

[13] An Assistant U.S. Attorney who prosecuted the Baltimore police officers in the GTTF cases.

by some person other than the plaintiff and defendant." *Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 648 (1970) (cleaned up). Webster's letter was sent to Mantegna rather than a third person, which means it was not published.[14] Therefore the letter is not defamatory. And, since it is not defamatory, it also cannot constitute an invasion of privacy or false light.

4. Schatzow's Comment

In her second amended complaint, Mantegna alleged that Schatzow defamed her on February 11, 2019, by stating, in reference to Rayam's 2015 failed *Franks* hearing, "We certainly knew about that, the whole world knew that." The circuit court quickly concluded that this statement was not about Mantegna and therefore did not defame her. We agree. "A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or associating with, that person." *Offen*, 402 Md. at 198–99 (cleaned up). Schatzow's comment makes no mention of Mantegna or reference to her, nor does the article in which the quote appeared. Therefore, as a matter of law, we conclude that Schatzow's statement does not defame Mantegna.

[14] The letter was also addressed to Mantegna's attorney at the time. As far as we can tell, Maryland has not addressed whether the communication to an agent of the person defamed is a publication. *See* Restatement (Second) of Torts § 577 cmt. e (Am. L. Inst. 1977). However, since Mantegna did not clearly raise this issue below or on appeal, we decline to address it.

Intentional Infliction of Emotional Distress

A. Parties' Contentions

Mantegna contends that she sufficiently pled a cause of action for intentional infliction of emotional distress. After setting forth the elements, she cites to *Borchers v. Hyrchuk* for the principle that "the extreme and outrageous character of the defendant's conduct may arise from his abuse of a position, or relation with another person which gives him actual or apparent authority over him, or power to affect his interests." 126 Md. App. 10, 19 (1999) (cleaned up). According to Mantegna, Mosby fired her to make it seem as though she were the leak and solve "a political problem." Mantegna argues that Mosby's and Schatzow's failure to correct the public misconception that she was the source of the leak, constituted an intentional infliction of emotional distress.

The State contends that the circuit court properly found that Mantegna failed to state a claim for intentional infliction of emotional distress, arguing that Mantegna provided no specific facts to demonstrate Defendants' conduct was intentional and reckless, or extreme or outrageous. Citing to *Carter v. Aramark Sports & Ent. Servs., Inc.*, in which we affirmed the circuit court's entry of summary judgment, dismissing the Carter's count for intentional infliction of emotional distress, among other counts, the State notes that "[f]or conduct to meet the test of 'outrageousness,' it must be 'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.'" 153 Md. App. 210, 247–48 (2003) (quoting *Batson v. Shiflett*, 325 Md. 684, 733 (1992)). Turning to Mantegna's claim, the State argues that as an employer and elected official, none of Mosby's (or Schatzow's) actions—terminating an employee,

communicating with the press—demonstrates extreme or outrageous conduct. Finally, in response to Mantegna's allegation that Mosby and Schatzow had a duty to correct a public misconception that Mantegna was the leak, the State asserts that failing to act is not extreme and outrageous conduct.

B. Analysis

In order to state a claim for intentional infliction of emotional distress, the plaintiff must allege facts that establish that: (1) the defendant's conduct was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there was a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress was severe. *Carter v. Aramark Sports & Ent. Servs., Inc.*, 153 Md. App. 210, 220–23, 245 (2003) (affirming the circuit court's entry of summary judgment, dismissing entire complaint, where appellants, the Carters, sued appellees, a concession services supplier, alleging intentional infliction of emotional distress, among other counts, arising from supplier's allegation that the Carters had engaged in a scheme to reuse discarded yogurt cups for sale of frozen yogurt at Oriole Park at Camden Yards Stadium).

"[A] complaint alleging intentional infliction of emotional distress must allege and prove the elements for that tort 'with specificity[,]'" meaning the allegations must be more than conclusory statements. *Id.* at 246 (quoting *Foor v. Juv. Servs. Admin*., 78 Md. App. 151, 175 (1989). "For conduct to meet the test of 'outrageousness,' it must be 'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Batson*, 325 Md. at 733 (quoting *Harris*

v. Jones, 281 Md. 560, 567 (1977)). "The standard for actionable conduct under this tort is exacting and stringent." *Carter*, 153 Md. App. at 247.[15]

In *Borchers*, we said:

> . . . we also note the long-standing principle that 'the extreme and outrageous character of the defendant's conduct may arise from his abuse of a position, or relation with another person which gives him actual or apparent authority over him, or power to affect his interests. . . if the actor is in a special relationship to the plaintiff, such as employer to employee, the plaintiff may be entitled to a greater degree of protection from certain acts than if he were a mere stranger.

126 Md. App. At 19 (quoting *Harris*, 281 Md. at 569; Richard T. Gilbert & Paul T. Gilbert, *Maryland Tort Law Handbook* § 16.1.3, pgs. 183–84 (1992).

Mantegna asserts that Defendants' conduct—"firing [her] without cause amid public outcry over an alleged 'leak' relating to the GTTF investigation"—was extreme and outrageous. However, her allegation lacks sufficient specificity. Mantegna presents no

[15] We have only upheld claims for intentional infliction of emotional distress in cases involving "truly egregious acts."

> *See Figueiredo–Torres v. Nickel,* 321 Md. 642, 584 A.2d 69 (1991) (psychologist had sexual relations with the plaintiff's wife during the time when he was treating the couple as their marriage counselor); *B.N. v. K.K.,* 312 Md. 135, 538 A.2d 1175 (1988) (physician did not tell nurse with whom he had sexual intercourse that he had herpes); *Young v. Hartford Accident & Indemnity,* 303 Md. 182, 492 A.2d 1270 (1985) (worker's compensation insurer's "sole purpose" in insisting that claimant submit to psychiatric examination was to harass her and force her to abandon her claim or to commit suicide).

Batson, 325 Md. at 734; *but see*, *Borchers*, 126 Md. App. 210 (affirming circuit court's dismissal of church member's intentional infliction of emotional distress count and holding pastor's alleged conduct was not extreme and outrageous where church member alleged when she sought advice from pastor concerning marital difficulties, he exploited his position to initiate sexual relationship with her).

evidence that Defendant's decision to terminate her was extreme and outrageous other than her bald assertion that Mosby and Schatzow benefited from the decision. We agree with the circuit court's finding that Defendants' firing of Mantegna for political reasons does not constitute extreme or outrageous conduct. As the State points out, employers, including elected officials, routinely terminate employees. And, as the circuit court pointed out, while not pleasant, it is certainly not uncommon for elected officials to terminate employees during a political change of regimes. Additionally, elected officials, directly or through spokespeople, routinely answer questions from the press, including those concerning personnel. On their face, none of these practices constitute extreme or outrageous conduct, nor do the conclusory allegations presented by Mantegna.

As to Mantegna's assertion that Defendants' failure to correct the public's perception that she was the leak was extreme and outrageous, we also disagree. Maryland has not addressed whether one's failure to act or omission can constitute extreme and outrageous conduct in the context of an allegation of intentional infliction of emotional distress. Nonetheless, in this case, Mantegna's second amended complaint did not allege sufficiently specific facts to establish that by not correcting the public's perception that Mantegna was the leak, Defendants intentionally or recklessly caused Mantegna severe emotional distress, nor that such inaction was extreme and outrageous. For these reasons, we determine that the circuit court properly found that Mantegna failed to state a claim for intentional infliction of emotional distress.

Wrongful Discharge

A. Parties' Contentions

Mantegna also contends that she sufficiently pled her cause of action for wrongful discharge by alleging that her termination violated a clear mandate of public policy. Mantegna claims that she was fired for complying with 8.4 (c) and (d) of the Model Rules of Professional Conduct, as well as Maryland Rule 19-304.1. Under these rules, Mantegna argues that she had a "duty . . . to prevent police officers with known integrity issues from impacting the administration of justice by tainting investigations[,]" and inform those officers' direct supervisor of what she knew. In her second amended complaint, she argued that her case was analogous to the circumstances in *Adler v. Am. Standard Corp.*, 291 Md. 31 (1981).

The State contends that Mantegna did not set forth a clear mandate of public policy that was contravened by her discharge. To illustrate the standard for clear public policy, the State discusses several cases, including *Adler*, in which our Supreme Court held that the employee had failed to demonstrate any clear mandate of public policy that was violated by termination. On the other hand, the State points out that wrongful discharge claims have been recognized where an employee has been fired for refusing to engage in illegal activity, exercising legal rights, or performing a legally mandated duty**.** The State argues, however, "that there is no public policy that requires attorneys to alert law enforcement supervisors about issues with the officers they supervise." Accordingly, it concludes that the circuit court correctly ruled that the Maryland Attorneys' Rules of Professional Conduct ("MARPC") did not cover Mantegna's behavior.

B. Analysis

In general, an at-will employee can be discharged at any time, with or without reason. *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 450 (2017) (citing *Adler*, 291 Md. at 35). However, there are exceptions to this rule, including "when the motivation for the discharge contravenes some clear mandate of public policy." *Adler*, 291 Md. at 47. To establish a claim for wrongful termination or discharge, "the employee must be discharged, the basis for the employee's discharge must violate some clear mandate of public policy, and there must be a nexus between the employee's conduct and the employer's decision to fire the employee." *Wholey v. Sears Roebuck*, 370 Md. 38, 50–51 (2002) (citations omitted).

A public policy is a "principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good." *Adler*, 291 Md. at 45. Normally, the declaration of public policy is the function of the legislative branch, derived from constitutional or statutory mandates. *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 423 (2003); *see Adler*, 291 Md. at 45–46. "[T]herefore, while we may recognize a cause of action in common law, the basis for that cause of action should be grounded in some clear mandate of public policy." *Porterfield*, 374 Md. at 424. As the Court explained in *Adler*:

> The truth is that the theory of public policy embodies a doctrine of vague and variable quality, and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as the basis of a judicial determination, if at all, only with the utmost circumspection. The public policy of one generation may not, under changed conditions, be the public policy of another.

291 Md. at 46 (quoting *Patton v. United States*, 281 U.S. 276, 306 (1930)).

In *Adler*, the plaintiff, an at-will employee, was hired by the defendant corporation to conduct a thorough analysis of the management and operational structure of the corporation. *Id.* at 32–33. In his analysis, the plaintiff claimed that he discovered numerous improper and illegal practices by the corporation. *Id.* at 33–34. Shortly after reporting his discoveries to high-level managerial personnel, he was terminated. *Id.* at 34. The plaintiff alleged that he was discharged in order to conceal illicit activity by his employer. *Id.* While the Court recognized wrongful discharge as a cause of action, it concluded that the plaintiff had failed to demonstrate that the basis of his termination had violated any clear mandate of public policy, and therefore, failed to state a claim for which relief could be granted. *Id.* at 43–47.

Since recognizing wrongful discharge as a cause of action, Maryland courts have only found a violation of a clear mandate of public policy in this context under very limited circumstances. *King v. Marriott Inter. Inc.*, 160 Md. App. 689, 901 (2005). For example, such violations have been found where an employer has been fired for refusing to violate the law or legal rights of a third party, *see Kessler v. Equity Mgmt., Inc.*, 82 Md. App. 577, 589–90 (1990) (holding that firing an at-will employee for refusing to commit the tort of invasion of privacy by trespassing into and snooping through tenants' apartments constitutes wrongful discharge); *Insignia Residential Corp. v. Ashonti*, 359 Md. 560, 562–63 (2000) (holding that wrongful discharge claim would be recognized where employee was fired because she refused to acquiesce in a form of "quid pro quo" sexual harassment that would have amounted to prostitution), and where an employee has been fired for

exercising a specific legal right or duty. *See Ewing v. Koppers Co.*, 312 Md. 45, 50 (1988) (holding that firing an employee for filing a worker's compensation claim constitutes wrongful termination); *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.*, 98 Md. App. 123, 134–40 (1993) (holding that firing an employee for reporting incidents of suspected child abuse contravenes a clear mandate of public policy).

On the other hand, violations of public policy have *not* been recognized where at-will employees have been terminated for: asking to consult with an attorney about employment-related matters,[16] complaining about a company's illegal marketing activities,[17] and reporting a violation of state or federal law.[18]

Mantegna asserts that she was terminated in violation of public policies that make it her duty as a prosecutor to attempt to prevent illegal or unethical conduct by police officers by alerting that officer's supervisor. However, as a matter of law, there is no clear mandate of public policy requiring attorneys to alert law enforcement supervisors to issues regarding officers under their command. Under *Brady v. Maryland*, prosecutors have a duty to disclose exculpatory material and impeachment evidence to a *criminal defendant* who stands trial. *Byrd v. State*, 471 Md. 359, 372 (2020) (citing *Brady v. Maryland*, 373 U.S. 83 (1963); *see also* Md. Rules 4-262, 4-263. However, as the State points out, neither

[16] *See Porterfield*, 374 Md. at 429–30.

[17] *See Parks v. Alpharma, Inc.*, 421 Md. 59, 65, 83–85 (2011).

[18] *See Yuan*, 452 Md. at 451–52.

Brady and its progeny, nor criminal discovery rules require prosecutors to make disclosures to *law enforcement supervisors* about their subordinates.

Alternatively, Mantegna tries to shoehorn her conduct into the MARPC, alleging that she was fired for complying with her duties under Rules 19-308.4(b)-(d),[19] 19-304.1,[20] and 19-303.3(a)(4) & (c).[21] However, Mantegna fails to direct us to, nor can we find, any

[19] It is professional misconduct for an attorney to:
…
(b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;
…

[20] (a) In the course of representing a client an attorney shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by Rule 19-301.6 (1.6).

[21] (a) An attorney shall not knowingly:
…
(4) offer evidence that the attorney knows to be false. If an attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.
…
(c) An attorney may refuse to offer evidence that the attorney reasonably believes is false.

clear mandate in the MARPC that requires an attorney to inform a police officer about issues concerning an officer he or she supervises.

In her second amended complaint, Mantegna claimed that her case was analogous to the matter at issue in *Adler*. We agree, but only in terms of the Court's conclusion. As discussed *supra*, in *Adler* our Supreme Court determined that the employee had failed to demonstrate that the alleged basis of his termination—his discovery and reporting of the corporation's illicit activities—had violated any clear mandate of public policy, and therefore, failed to state a claim for which relief could be granted. *Id.* at 43–47. Similarly, here, we conclude that Mantegna's alleged basis for her termination—warning Sgt. Jenkins about Officer Rayam and Gondo's credibility issues—fails to demonstrate a violation of a clear mandate of public policy, and therefore, fails to state a claim for which relief can be granted.

Respondeat Superior

Under the doctrine of respondeat superior, Mantegna also asserted a claim against the State of Maryland, claiming that the alleged torts by Mosby and Schatzow were committed in the scope of their employment with the State. As such, she argued that the State should also be held liable for the alleged conduct of Mosby and Schatzow. However, because Mantegna has failed to state a claim for which relief can be granted against Mosby and Schatzow, she is unable to invoke the doctrine of respondeat superior. *See Southern Mgmt. Corp. v. Taha*, 378 Md. 461, 486 (2003); *DiPino v. Davis*, 354 Md. 18, 48 (1999).

II. We Decline to Formally Recognize the Doctrine of Defamation by Implication

A. Parties' Contentions

Finally, Mantegna asks that we formally recognize the doctrine of implicit defamation. She posits that because "Maryland has long found the context surrounding alleged defamatory statements to be relevant to the meaning of those statements[, . . .] this tells us that the law of this state is that the factual surroundings of alleged defamatory statements are relevant to a determination of whether they are defamatory." Citing to *Embrey v. Holly* as a good example, she contends that like in *Embrey*, where "[n]obody stated outright that [Holly] was a thief, but [Embrey's] comments could only be viewed as intending to believe that [Holly] had been called a thief[,]" here, "even if [Defendants] did not outright state [Mantegna] was 'the leak,' their statements and actions (as intended) led to the inescapable conclusion that Defendants meant to portray [Mantegna] as the leak."

The State responds that the doctrine of defamation by implication has not been formally recognized in Maryland state court. However, the State acknowledges that in *Harvey v. Cable News Network, Inc.*, the federal District Court for the District of Maryland ruled that under Maryland law, a plaintiff can base a claim for defamation on what is allegedly implied rather than what is actually stated. 520 F. Supp. 3d 693, 715 (D. Md. 2021) (citing *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993)). However, the State points out that the court in *Harvey* noted that, where the statement is true and the plaintiff claims defamation by implication, "an especially rigorous showing" is necessary. *Id.* Moreover, the State adds that "[t]he language must not only be reasonably read to impart the false innuendo, but it must also affirmatively suggest that the author

intends or endorses the inference." *Id.* (citing *White v. Fraternal Order of Police*, 909 F.2d 512, 520 (D.C. Cir. 1990)). For the reasons discussed above, the State asserts that Mosby's statements were privileged and that Schatzow's comments did not "affirmatively suggest that he intended or endorsed any defamatory inference about Ms. Mantegna." Finally, as to Saunders' email, the State argues that her "'no comment' response did not affirmatively suggest that Saunders, as agent for Mosby, intended or endorsed the inference."

B. Analysis

Although it does not appear that Maryland state court has formally adopted the doctrine of defamation by implication,[22] we note that the federal district court, applying Maryland law, recently held:

> A plaintiff may base a claim for defamation on what is allegedly implied rather than specifically stated. *See Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993). However, "because the constitution provides a sanctuary for truth, a libel-by-implication plaintiff must make an especially rigorous showing where the expressed facts are literally true." *Id.* at 1092–93 (citations omitted). "The language must not only be reasonably read to impart the false innuendo, but it must also affirmatively suggest that the author intends or endorses the inference." *Id.* at 1093 (citing *White v. Fraternal Order of Police*, 909 F.2d 512, 520 (D.C. Cir. 1990)).

Harvey, 520 F. Supp. 3d at 715. At this time, we decline to formally recognize the doctrine of defamation by implication.

However, even if we did officially recognize this theory, we would nonetheless conclude that Mantegna has not alleged sufficient facts to meet this "rigorous standard."

[22] *But see Batson v. Shiflett*, 325 Md. 684, 724 n.14 (1992) ("A mere inference, implication, or insinuation is as actionable as a positive assertion if the meaning is plain. The test is whether the words, taken in their common and ordinary meaning, in the sense in which they are generally used, are capable of defamatory construction.")

Id. at 715. As discussed above, Mosby's alleged defamatory statements in her letter to Schenning were privileged. As to the statements in Webster's letter, those cannot be defamatory by implication because they were sent to Mantegna, rather than a third person. With respect to Schatzow's comment, given that neither his statement itself, nor the article it was quoted in, mentioned or referred to Mantegna, we cannot conclude that Mantegna has sufficiently alleged that this statement affirmatively suggests that Schatzow intended or endorsed the inference that Mantegna was "the leak."

Finally, as to Saunders' statement, Mantegna argues that, by stating that Mantegna was no longer an employee of the BCSAO and that it could not comment further on the USAO's investigation, the natural and intended inference from this was that Mantegna was "the leak." However, both of Saunders' statements were, in fact, true. Mantegna would therefore not only have to show that her inference is reasonably implied from the statements but that the statements "affirmatively suggest" that the author intends or endorses the inference. *Id.* at 715. Saunders' email was in response to a reporter who asked her whether Mantegna had been terminated in connection to the GTTF case.

It is *possible* that, in this context, Saunders' comments on behalf of Mosby could be understood to imply that Mantegna was "the leak" in the GTTF investigation. However, we cannot say that Mantegna has demonstrated that the statement affirmatively suggests that its author intended or endorsed this inference. For comparison, in *Batson*, the Court held that a national union president's statements in flyers, impliedly accusing a local union president of misusing funds, were capable of defamatory meaning even though the statements were couched in conditional terms. 325 Md. at 723–24. In *Batson*, the flyer read

in pertinent part, "[i]f Harmon is guilty of misuse of the locals[']s funds then you may be too." *Id.* at 723. Unlike the following statement, which seems to affirmatively suggest that its author intended or endorsed the inference that the plaintiff misused union funds, here, the language in Saunders' email is not nearly as suggestive that Mantegna was "the leak." In fact, the relevant term is not even included in the statement. Thus, even if we formally recognized defamation by implication, Mantegna has not sufficiently alleged this doctrine's applicability to the facts of this case.

For these reasons, we conclude that the circuit court did not err in dismissing Mantegna's second amended complaint for failing to state a claim upon which relief could be granted, and accordingly, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY THE COSTS.